

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 60

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW G. WILKES and ALAN J. BARTHOLOMEW

Appeal No. 1998-0113
Application No. 08/437,517

ON BRIEF

Before PAK, OWENS, and WALTZ, Administrative Patent Judges.
WALTZ, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 91 through 115, which are the only claims remaining in this application.

According to appellants, the invention is directed to staple fibers comprising a plurality of solid cellulosic regenerated viscose fibers with three or four limbs having a certain specified decitex and length-to-width aspect ratio (Brief, pages 2-3). Illustrative claim 91 is reproduced below:

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91. Staple fibres comprising a plurality of solid cellulosic regenerated viscose fibres of standard viscose, substantially all of said fibres having substantially the same cross-sectional shape, each fibre having a decitex in the range of 0.5 to 5 and having three limbs, each limb having a length-to-width aspect ratio in the range of 2:1 to 10:1.

The examiner has relied upon the following references as evidence of obviousness:

Turbak et al. (Turbak)	4,076,933	Feb. 28, 1978
Minami et al. (Minami)	61-113812	May 31, 1986
(Published Japanese Patent Application) ¹		

The claims on appeal stand rejected under 35 U.S.C. § 103 as unpatentable over Turbak and Minami in combination (Answer, page 3). We reverse this rejection essentially for the reasons set forth in the Brief and the reasons below.

OPINION

The examiner finds that Turbak teaches trilobal and quadrilobal regenerated cellulosic fibers, including staple fibers, having a denier of about 0.96 (Answer, page 3).² The

¹ We rely upon and cite from a full English translation of this document, previously made of record.

² Appellants and the examiner agree that the claimed decitex range of 0.5 to 5 is equivalent to a denier range of 0.45 to 4.5 (Brief, page 4; Answer, page 3).

examiner finds that Turbak is silent as to any length-to-width aspect ratio but that "Minami states that it is well known in the art to vary and control the length and width aspect ratio of 2:1-6:1 as claimed in order to increase the bulk of the fibers." *Id.* From these findings, the examiner concludes that it would have been obvious to one of ordinary skill in the art to combine the length-to-width aspect ratio as taught by Minami in the fibers of Turbak in order to desirably increase the bulk of the fibers (*id.*).

There must be some suggestion, teaching, or motivation for combining references, found either in the references themselves, the knowledge generally available to one of ordinary skill in the art, or the nature of the problem to be solved. *See In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999); *In re Jones*, 958 F.2d 347, 351, 21 USPQ2d 1941, 1943-44 (Fed. Cir. 1992). The showing of the suggestion, reason or motivation must be clear and particular. *Dembiczak*, *supra*. We determine that the examiner has not presented any convincing or reasonable showing of any

suggestion, reason or motivation to combine the prior art references as proposed in the rejection.

The examiner has not advanced any convincing evidence or reasoning why one of ordinary skill in the art would have used the length-to-width aspect ratio of Minami for the fibers of Turbak in view of the prior art as a whole. Turbak discloses cellulosic regenerated fibers made by a nitrosation process in combination with specific organic solvents and regenerants (see col. 1, l. 53-col. 2, l. 60) while Minami is directed to viscose rayon filaments (i.e., cellulosic regenerated fibers made from the viscose process).³ There is no evidence presented by the examiner as to why one of ordinary skill in the art would have applied the aspect ratio of Minami for viscose rayon fibers to the different fibers of Turbak, especially when Minami teaches that his invention is not applicable even to similar materials (page 3, penultimate paragraph; page 4, second paragraph). Turbak specifically

³ As correctly argued by appellants (Brief, page 6), viscose rayon is a subset of rayon, being one of the four main types of rayon. See *Hackh's Chemical Dictionary*, pp. 724-25, 3rd ed., The Blakiston Co., Inc., N.Y., 1953 (copy attached to this decision).

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teaches against use of special spinnerettes (col. 1, ll. 40-41) while Minami uses a special spinnerette in combination with certain drying tensions (page 5, last paragraph; page 6, 5th paragraph; page 7, second full paragraph; and the Comparison Examples on page 10). Therefore, even if the references were combined, the examiner has not explained how the aspect ratios desired by Minami could have been produced by the method disclosed by Turbak. Additionally, if the references were combined as proposed by the examiner to employ the aspect ratio of Minami in the fibers of Turbak, the claimed subject matter would not be suggested because the fibers of Turbak are not viscose fibers as claimed.

For the foregoing reasons and those set forth in the Brief, we determine that the examiner has not established a *prima facie* case of obviousness in view of this reference evidence. Accordingly, the examiner's rejection of the claims on appeal under 35 U.S.C. § 103 over the combination of Turbak and Minami is reversed.

The decision of the examiner is reversed.

REVERSED

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CHUNG K. PAK)	
Administrative Patent Judge)	
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TERRY J. OWENS)	APPEALS
Administrative Patent Judge)	AND
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